IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2516 OF 2007

Balabai Shripati Kankekar & Anr..... ....Petitioners
V/s
Shantabai Nivritti Kankekar..... ....Respondent.

Mr.Manoj Chatage i/by Mr.S.D.Dharmadhikari, Adv. For the petitioner.

Mr.Rahul P. Walvekar, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
12/9/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

By the present petition the petitioner is challenging the order passed by the trial Court dated 13.2.07 rejecting the application moved by the present petitioners/defendants for setting aside the no written statement order and refusing to permit the petitioners to file written statement. The plaintiff and the defendant No.1 are real sisters and the defendant No.2 is son of defendant No.1. The father of the plaintiff and defendant No.1 left behind landed property comprising of agricultural land so also residential house. The plaintiff has filed a suit for cancellation of sale deed executed by the father of the plaintiff and defendant No.1 in favour of defendant No.2 so also for partition. The suit came to be filed sometime in January, 2006 and the present petitioners were served with summons in March, 2006. On account of failure on the part of defendants to file written statement within time granted has resulted in passing of order of no written statement on 12.7.06. The petitioner filed present application on 14.8.06 hardly

within one month from the date of passing of order of no written statement. The ground assigned in the application was that both the defendants were ill and unable to contact their advocate to instruct him for preparing the written statement. The trial Court has held that as the defendants have failed to file written statement within 90 days the application cannot be granted unless and until exceptional case is made out.

2. Learned counsel for the petitioner submits that if and in case petitioners are denied chance to contest the suit by permitting them to file written statement same is bound to result in miscarriage of justice in as much as ex-parte decree will be passed without suit being contested. The submission is that unless and until impugned order is interfered with cause of justice would suffer and petitioners will face utmost hardship and inconvenience. It is then submitted that respondent be compensated by payment of costs for the inconvenience caused to her. Perused the order. Having regard to the relationship between the parties and the subject matter of the suit which is landed property and residential house, I deem it appropriate to grant one more opportunity to the petitioner to file written statement. Learned counsel for the petitioner submits that along with application written statement was tendered but the same has not been taken on record as legally filed. Having regard to the totality of facts and circumstances I deem it appropriate to allow present writ petition in the cause of justice however subject to payment of costs quantified at Rs.5000/- which shall be condition precedent. Hence I pass the following order:

The impugned order passed by the Civil Judge, Senior Division, Kolhapur dated 13.2.07 below Ex.12 is quashed and set aside. The No written statement order passed by the trial Court is also quashed and set aside by allowing the application at Ex.12. I direct the trial Court to take

on record the written statement tender by the petitioners along with the application Ex.12 as legally filed and to proceed to decide the suit in accordance with law. However this order shall be subject to payment of Rs.5000/- to be paid by the petitioners within four weeks from today by depositing the same in the trial Court. Rule made absolute in above terms.

12.9.07